IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/04/2004

CORAM

THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

SECOND APPEAL NO.1026 OF 1993 AND SECOND APPEAL NO. 1304 OF 1993

S.A.NO.1026 OF 1993:

1. V. Ramasamy
2. V.Jayaraman .. Appellants

-Vs-

1. Kalyanam
2. Muthukumarasamy
3. Pushpavathy
4. Parvathy .. Respondents

S.A.NO.1304 OF 1993:

Muthukumaraswami .. Appellant

Vs.

1. V. Ramaswamy
2. V. Jayaraman
3. Pushpavathi
4. Parvathi
5. Kalyanam .. Respondents

S.A.No.1026 of 1993 is preferred under Section 100 of CPC against the judgment and decree in AS No.33 of 1992 dated 17.3.1993 on the file of the learned Subordinate Judge, Chidambaram, reversing the judgment and decree in O.S.842 of 1982 dated 10.4.1992 on the file of the District Munsif, Chidambaram.
S.A.No.1304 of 1993 is preferred under Section 100 of CPC against the judgment and decree in AS No.33 of 1992 dated 17.3.1993 on the file of the learned Subordinate Judge, Chidambaram, confirming the judgment and decree in O.S.842 of 1982 dated 10.4.1992 on the file of the District Munsif, Chidambaram.

!For Appellants : Mr.S.Krishnaswamy in SA.1026/93
Mr.Srinath Sridevan in SA.1304/93

^For Respondents: Mr.Srinath Sridevan in SA1026/93
Mr.S.Krishnaswamy in SA.1304/93

:COMMON JUDGMENT

This Judgment shall govern these two second appeals, namely, SA Nos.1026 and 1304 of 1993.

2. These appeals have arisen, one at the instance of the plaintiffs and the other at the instance of the second defendant, from the judgment of the learned Subordinate Judge, Chidambaram made in AS No.33 of 1992, wherein the judgment of the trial court in a suit for declaration and permanent injunction was modified by maintaining a part of the decree granted in favour of the plaintiffs and dismissing the rest.

3. The plaintiffs, who are the appellants in SA No.1026 of 1993, filed a suit for declaration and consequential permanent injunction with the following averments:

The suit properties more fully described in the schedule annexed to the plaint and situated in Keerapalayam village and the other properties originally belonged to Vedhanarayana Padayachi and his brother's sons, who effected a partition under a registered partition deed on 2 0.4.1964. Vedhanarayana Padayachi was allotted 'A' Schedule property under the partition deed and was put in possession of the same. He was in possession and enjoyment of the suit property till his life time. The suit property is one of the items of 'A' Schedule property to the partition deed. Vedhanarayana Padayachi died in the year 1971. The plaintiffs were his sons. The patta for the suit property was numbered as 8. After the death of Vedhanarayana Padayachi, the plaintiffs are in possession and enjoyment of the property, and they have been paying kist for the suit property. They have got sufficient documentary evidence to prove the same. The defendants, who have no manner of right, title or interest over the suit property, on the refusal of the demand to sell, were attempting to take forcible possession of the same; but, that attempt was thwarted. The defendants 3 to 5 are also the other heirs of Vedhanarayana Padayachi. The plaintiffs are in possession of the property for themselves and on behalf of the other heirs, namely defendants 3 to 5. Under the stated circumstances, there arose a necessity for filing the suit for declaration of title to the suit property and for consequential permanent injunction.

4. The suit was resisted by the defendants 1 and 2 stating that the property never belonged to Vedhanarayana Padayachi as alleged by the plaintiffs, nor had he got the same under the partition deed, nor had the plaintiffs got the property from their father on his death; that all the causes of action mentioned in the plaint, were false; that the plaintiffs had no title to the property; that the entire suit property belonged to the defendants; that they have been in actual possession and enjoyment of the same; that the first and second defendants' father Subbiah Padayachi purchased 16 cents out of the suit property under a registered sale deed dated 6.1.1942 for Rs.175/- from the previous owner namely Duraisamy Padayachi; that their mother Anjalai purchased 2 = cents from Thangaraj and Chelladurai under a registered sale deed dated 19.1.1961 for Rs.200/- and also purchased 6 cents from Pattamal @ Madhurammal under a sale deed dated 14.7.1962 for Rs.200/-; thus 24-1/2 cents out of 64 cents were purchased by the parents of the

defendants 1 and 2, and they were in enjoyment of the same; that the remaining 39-1/2 cents also were in possession and enjoyment of the father of the defendants 1 and 2 in his own right, and thus, the parents of the defendants 1 and 2 and after them, the defendants 1 and 2 have been in exclusive possession and enjoyment of the suit property for more than 40 years in their own right, and they have prescribed title also; that they had got patta for the entire suit property by updating the revenue records, and thus, the defendants 1 and 2 are the owners of the of the property, in which neither the plaintiffs nor the defendants 3 to 5 have got any iota of right, and hence, the suit was to be dismissed.

5. On the above pleadings, the trial court framed the necessary issues, tried the suit and decreed the same in entirety. Aggrieved, the second defendant took it on appeal. The learned Subordinate Judge, on consideration of the rival submissions and scrutiny of the materials available, modified the judgment of the trial court and has granted the relief of declaration in respect of the suit property in favour of the plaintiffs, except for 16 cents on the east and 16 cents on the west. Aggrieved by the denial of the relief in respect of a part of the claim, the plaintiffs have filed SA No.1026 of 1993 and aggrieved over the affirmation of the trial court's judgment in respect of a part of the relief granted in favour of the plaintiffs, the second defendant has filed SA No.1304 of 1993.

6. At the time of admission, the following substantial questions of law were formulated by this Court for consideration:

S.A.NO.1026 OF 1993:

"Whether the family arrangement is a compulsorily registrable document? If not, whether the lower appellate court is right in disbelieving the rights of the appellants on the basis of the unregistered documents Exs.A-19 and A-20?"

S.A.NO.1304 OF 1993:

1) Whether a decree for declaration of title can be granted simply because the defendant fails to prove his title thereto?

2) When a person produces a document under which he derives title, whether the burden of proof does not lie on him to show that his vendor had title to pass on?

7. Both the appeals were taken up together, since they came up out of the judgment of the learned Subordinate Judge, Chidambaram.

8. Heard the learned counsel for the appellants and also the learned Counsel for the respondents in both the appeals.

9. As could be seen above, the plaintiffs, who are the appellants in S.A.No.1026 of 1993, sought for a declaration of title in respect of the 64 cents of lands situated in Survey No.92/1, more fully described in the Schedule annexed to the plaint. They have specifically pleaded in the plaint that the property originally belonged to Vadhanarayana Padayachi and his brother's sons; that they effected a partition on 20.4.1964; that in that partition, the 'A' Schedule property mentioned in the partition deed was allotted to the share of Vadhanarayana Padayachi; that till his life time, he was enjoying the same, and on his death, the property came to the hands of his sons, the plaintiffs herein. In order to substantiate their case, the first plaintiff was examined as P.W.1 on the side of the plaintiffs. They have produced the partition deed entered into between Vadhanarayana Padayachi and his brother's sons on 20th April, 1964 and marked as Ex.A1. A perusal of Ex.A1 would clearly indicate that the suit property was one of the items of

properties that were divided between the parties, and it was also shown as item No.13 in the 'A' Schedule to the partition deed and that was allotted to Vadhanarayana Padayachi. It is not in controversy that the plaintiffs and the defendants 3 to 5 were the children of Vadhanarayana Padayachi. It is also available in evidence that the said 64 cents of punja lands were in Survey No.92/1, and patta has also been granted under Ex.A12. In order to show that they have been paying kist, they have produced Exs.A2 to A11 receipts. On the contrary, the defendants 1 and 2 came with a case stating that the entire property belonged to them; that the father of the defendants 1 to 2 purchased 16 cents under Ex.B4 dated 5.1.1942; that their mother Anjalai purchased 2 = cents under Ex.B1 dated 19.1.1961 and 6 cents under Ex.B2 dated 20.12.1943, thus totalling to 24 = cents, and the rest of the suit property namely 39 cents was in the possession and enjoyment of their parents; that on their death, it continued to be in the possession and enjoyment of the defendants 1 and 2 for more than 40 years, and thus, they have perfected title by adverse possession. The second defendant examined on the side of the defendants as D.W.1, has deposed that the 6 cents were purchased under a sale deed dated 14.7.1962 by one Pattammal @ Madhurammal, and under a sale deed dated 20.12.1943, the 6 cents were purchased by their mother. A registered copy of the sale deed of the year 1943 was marked as Ex. B2, while a registered copy of the sale deed dated 14.7.1962 was marked as Ex.B3. The trial Court has clearly discussed the evidence and marshalled the same and has pointed out that Ex.B2 cannot be a parent document for Ex.B3. Under such circumstances, the claim of the defendants 1 and 2 in respect of 6 cents under Ex.B2 cannot be accepted.

10. The further case of the defendants 1 and 2 was that the property originally belonged to Kuppu Padayachi, who had four sons namely Paradhesi Padayachi, Ramasamy Padayachi, Muthu Padayachi and Paavadai Padayachi; and that there was a division among themselves. One Duraisamy Padayachi, son of Muthusamy Padayachi, who got the 16 cents from his father, sold the same under Ex.B4 on 5.1.1942 to the defendants 1 and 2. As far as 16 cents of lands under Ex.B4 was concerned, from the evidence, it would be clear that it is a part and parcel of the property in respect of which the plaintiffs claimed title. It is also found by the Courts below that in the year 1942, a purchase was made under Ex.B4, and they have been in possession and enjoyment of the same. If the defendants 1 and 2 pursuant to Ex.B4 were put in possession of 16 cents and they have been in possession of the same from 1942 onwards, then the plaintiffs' claim in respect of the property covered under Ex.B4, has got to be rejected. Though the plaintiffs were able to show that it was the property shown as item No.13 in Ex.A1 partition deed Ex.A1, this property despite the partition, continued to be in possession and enjoyment of the defendants 1 and 2 and their predecessors-in-title. Thus, from the factual position, it would be quite clear that the plaintiffs' claim in respect of 16 cents covered under Ex.B4 has no legs to stand.

11. So far as 2 = cents covered under Ex.B1 is concerned, the case of the defendants 1 and 2 was that it was a purchase made by their mother Anjalai under Ex.B1. Both the Courts have given a concurrent finding that the defendants 1 and 2 could not correlate this 2 = cents with the suit property, and hence, in the face of the evidence available on the side of the plaintiffs in respect of the suit property, barring 16 cents covered under Ex.B4 in favour of the defendants 1 and 2 , the first and second defendants' claim in

respect of the rest has got to be rejected. It would be clear from the judgment of the first appellate Court that it has discussed the evidence both oral and documentary in extenso and marshalled the evidence and has given a finding that the plaintiffs are entitled to 48 cents out of 64 cents in the suit property, and the defendants are entitled to 16 cents which is situated immediately on the west of the eastern 16 cents, which belonged to the plaintiffs. Therefore, this Court is unable to notice any merits in either of the appeals.

12. In the result, both these second appeals are dismissed, confirming the judgment and decree of the first appellate Court and leaving the parties to bear their costs.

Index: yes
Internet: yes

To:

1. The Subordinate Judge
Chidambaram
2. The District Munsif
Chidambaram
3. The Record Keeper
V.R. Section
High Court, Madras.

nsv/